

**From:** FISMA A1  
**To:** [REDACTED]@fme.eu  
**Cc:** FISMA ACCES DOCUMENTS  
**Subject:** Your access request GestDem 2018/6509  
**Attachments:** C\_2018\_8504\_F1\_COMMUNICATION\_TO\_COMMISSION\_EN\_V2\_P1\_10  
04215.pdf

Dear Mr [REDACTED]


**Subject: Your application for access to documents – Ref GestDem No 2018/6509**

We refer to your request for access to documents, registered on 06/12/2018 under the above mentioned reference number.

We enclose a copy of the document requested. It is only available in English.

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Yours sincerely,  
FISMA A1







EUROPEAN  
COMMISSION

Brussels, 13.12.2018  
C(2018) 8504 final

### **COMMUNICATION TO THE COMMISSION**

**on the intention to endorse only once specific amendments are introduced the draft  
Regulatory and Implementing Technical Standards submitted by ESMA with regard to  
the information and the details of a securitisation, as well as the format and  
standardised templates thereof, to be made available by the originator, sponsor and  
SSPE**

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### A. Background

Regulation (EU) 2017/2402 of the European Parliament and of the Council laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation was published in the Official Journal of the European Union (EU) on 28 December 2017 and will enter into application on 1 January 2019.

As set out in Recital (2), the Securitisation Regulation's objective is to "restart high-quality securitisation markets, without repeating the mistakes made before the 2008 financial crisis". As further explained in Recital (4), securitisations are an important element of well-functioning financial markets, in part because they help diversify funding sources, improve the efficiency of the financial system, and provide additional investment opportunities. The Regulation recognises that the development of a simple, transparent and standardised securitisation market is a building block of the Capital Markets Union.

Following the respective mandates in the Regulation, on 22 August ESMA submitted to the Commission a final report with draft regulatory technical standards specifying the information and the details of a securitisation to be made available by the originator, sponsor and SSPE. The final report also included draft implementing technical standards with regard to the format and standardised templates for making this information available.<sup>1</sup>

The transitional provisions in Article 43(8) of the Securitisation Regulation provide for a fall back solution in case there is a gap between the application date of the transparency requirements (which apply to all securitisations as of 1 January 2019) and the application date of the disclosure technical standards. In such a situation, the industry is referred to Annexes I to VIII of the CRA3 Regulation. For a number of reasons, however, neither industry nor supervisors are in a position to use them from January 2019.

Therefore, ESMA re-organised its resource and priorities to deliver the final report on those standards well ahead of the legal deadline (18 January 2019)<sup>2</sup>. This aimed to avoid a potential

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<sup>1</sup> <https://www.esma.europa.eu/press-news/esma-news/esma-defines-disclosure-standards-under-securitisation-regulation>

<sup>2</sup> [https://www.esma.europa.eu/sites/default/files/library/esma33-128-485\\_letter\\_to\\_og\\_timing\\_securitisation\\_disclosure\\_requirements.pdf.pdf](https://www.esma.europa.eu/sites/default/files/library/esma33-128-485_letter_to_og_timing_securitisation_disclosure_requirements.pdf.pdf)

situation whereby market participants will have to make two rounds of costly adjustments to their reporting systems.

The draft technical standards and the transparency requirements they specify affect all participants of the securitisation market in Europe. They build on experience gathered by the ECB in establishing loan-level disclosure templates for asset-backed securities in 2013, but amend those templates and add further data requirements.

Procedurally, under Articles 10 and 15 of the founding Regulation of ESMA<sup>3</sup>, the following options are available to the Commission: (i) to endorse the regulatory or implementing technical standards without amendments; (ii) not to endorse them; (iii) to adopt them in part; or (iv) to adopt them with amendments. Where the Commission intends not to endorse the draft regulatory and implementing technical standards, it shall send them back to ESMA explaining why it does not endorse them.

#### **B. Assessment of the draft technical standards submitted by ESMA**

ESMA's draft technical standards specify details that are essential for investors, potential investors, competent authorities, and other entities listed in the Regulation to meet their respective regulatory obligations. The draft standards are necessarily comprehensive and detailed as they aim to ensure a standardised disclosure of information for the entire securitisation market. At the same time, ESMA's draft disclosure requirements recognise that there may be structural reasons preventing a subset of information to be provided by reporting entities. ESMA's draft standards accordingly provide reporting entities with a set of standardised 'No Data' options to use in such situations, for a limited set of fields.

The Commission agrees with ESMA's approach in these technical standards, including the need to respect the principle of proportionality. However if not designed properly, these standards could place an excessive burden on the disclosing entity, since they represent the first instance of a comprehensive EU-wide disclosure regime for securitisations. In view of the sanctioning regime in case of non-compliance, disproportionately strict disclosure requirements risk disrupting securitisation issuance in the EU, which would run counter to the very objectives of the Regulation.

Therefore, the Commission would request ESMA to examine whether, at the present juncture, the 'No Data' option could be available for additional fields of the draft templates. This would be particularly important for the templates for asset-backed commercial paper securitisations (for which there are no similar harmonised disclosure templates currently in use). The Commission would also request ESMA to closely monitor the use of and need for these 'No Data' options in each template field, as part of its future contribution to the Joint Committee's report mandated in Article 44 of the Regulation.

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<sup>3</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.

This element of proportionality is deemed essential to ensure a balance between, on the one hand, giving users the necessary available information and, on the other hand, promoting a well-functioning securitisation market in line with objectives of the Regulation.

It is therefore proposed that the Commission, acting in accordance with the procedures set out in the founding Regulation of ESMA, and taking full account of financial services legislation in general, and Regulation (EU) 2017/2402 in particular, informs ESMA of its intention to endorse the draft regulatory and implementing technical standards on disclosure requirements in securitisation only once the amendments outlined above are introduced.

ESMA will then have a six-week period to re-submit the draft regulatory and implementing technical standards in the form of a formal opinion, after which the Commission may adopt the amended implementing and regulatory technical standards.

#### **D. Conclusion**

The Commission is therefore invited to:

- approve the enclosed letter, in which it communicates to ESMA (i) its intention to endorse the draft regulatory and implementing technical standards only once specific amendments are introduced and (ii) the reasons for this decision; and
- authorise the Director General of Directorate General of Financial Stability, Financial Services and Capital Markets Union to sign and transmit the letter enclosed to ESMA on behalf of the Commission.